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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

Amicus Trade AB and Store Solutions, L.L.C. d/b/a/ Easyklip, Plaintiffs, vs. Winston Products LLC and Winston Breeden III, Defendants.	CASE NO. 1:16-CV-06303 JUDGE ELAINE E. BUCKLO **ANSWER AND COUNTERCLAIMS**

On July 18, 2016, Plaintiffs Amicus Trade AB and Store Solutions, L.L.C., d/b/a Easyklip (collectively, "Plaintiffs") filed their First Amended Complaint (Dkt. No. 9). On August 25, 2016, the Court granted the parties' Joint Motion to Extend Time to Answer (Dkt. No. 16), granting Winston Products, LLC, and Winston Breeden, III, (collectively, "Winston Products") an extension of time until September 19, 2016, to file their answer. Pursuant to that Order (Dkt. No. 18), Winston Products files this Answer and Counterclaims and denies any and all allegations not specifically admitted herein. For its Answer, Winston Products states as follows:

THE PARTIES

1. Winston Products is without sufficient knowledge to admit or deny the allegations contained in Paragraph 1 of the First Amended Complaint and therefore denies those allegations.

2. Winston Products is without sufficient knowledge to admit or deny the allegations contained in Paragraph 2 of the First Amended Complaint and therefore denies those allegations.

3. Winston Products denies that it is an Ohio corporation and avers that it is an Ohio limited liability company. Winston Products admits the remaining allegations in Paragraph 3.

4. Winston Products admits the allegations in Paragraph 4.

NATURE OF THE ACTION

5. Winston Products admits the allegations in Paragraph 5.

JURISDICTION AND VENUE

6. This Paragraph alleges conclusions of law to which no responsive pleadings is required.

7. This Paragraph alleges conclusions of law to which no responsive pleadings is required.

8. This Paragraph alleges conclusions of law to which no responsive pleadings is required.

BACKGROUND FACTS

9. Winston Products admits that U.S. Patent No. 6,789,295 ("the '295 patent") lists on its face an issue date of September 14, 2004, and identifies Gerhard Svensson as the sole inventor. Winston Products further admits that a copy of the '295 patent, entitled "CLAMP APPARATUS," is attached to the First Amended Complaint as Exhibit A. Winston Products is without sufficient knowledge to admit or deny the remaining allegations contained in Paragraph 9 of the First Amended Complaint and therefore denies those allegations.

10. Winston Products admits that U.S. Design Patent D543,896 ("the D896 patent") lists on its face an issue date of June 5, 2007, and identifies Staffan Gunnarsson as the sole inventor. Winston Products further admits that a copy of the D896 patent, entitled "FASTENING CLIP," is attached to the First Amended Complaint as Exhibit B. Winston Products is without sufficient

knowledge to admit or deny the remaining allegations contained in Paragraph 9 of the First Amended Complaint and therefore denies those allegations.

11. Winston Products is without sufficient knowledge to admit or deny the allegations contained in Paragraph 11 of the First Amended Complaint and therefore denies those allegations.

12. Winston Products admits that on or about April 30, 2015, attorneys for Staffan Gunnarsson and Amicus Trade AB sent the letter attached as Exhibit C to the First Amended Complaint to Winston Breeden. The contents of the Exhibit speaks for itself, thus Winston Products leaves Plaintiffs to their proof. Winston Products denies the remaining allegations in Paragraph 12.

13. Winston Products admits that counsel for the parties communicated with each other beginning in approximately May 2015. Winston Products denies the remaining allegations in Paragraph 13.

14. Winston Products admits that counsel for Plaintiffs provided a draft settlement agreement in 2015. The draft speaks for itself, thus Winston Products leaves Plaintiffs to their proof. Winston Products denies the remaining allegations in Paragraph 14.

15. Winston Products denies the allegations in Paragraph 15.

16. Winston Products denies the allegations in Paragraph 16.

17. Winston Products denies the allegations in Paragraph 17.

18. Winston Products denies the allegations in Paragraph 18.

19. Winston Products denies the allegations in Paragraph 19.

20. Winston Products denies the allegations in Paragraph 20.

21. Winston Products denies the allegations in Paragraph 21.

COUNT I
(Infringement under 35 U.S.C. § 271(a) & (b) of U.S. Design Patent D543,896 by Winston Products LLC)

22. Winston Products incorporates Paragraphs 1–21 as if fully restated herein.

23. Winston Products denies the allegations in Paragraph 23.

24. Winston Products denies the allegations in Paragraph 24.

25. Winston Products denies the allegations in Paragraph 25.

26. Winston Products denies the allegations in Paragraph 26.

27. Winston Products denies the allegations in Paragraph 27.

COUNT II
(Infringement under 35 U.S.C. § 271(a) & (b) of U.S. Patent No. 6,789,295 by Winston Products LLC)

28. Winston Products incorporates Paragraphs 1–27 as if fully restated herein.

29. Winston Products denies the allegations in Paragraph 29.

30. Winston Products denies the allegations in Paragraph 30.

31. Winston Products denies the allegations in Paragraph 31.

32. Winston Products denies the allegations in Paragraph 32.

33. Winston Products denies the allegations in Paragraph 33.

COUNT III
(Infringement under 35 U.S.C. § 271(b) of U.S. Design Patent D543,896 by Winston Breeden, III)

34. Winston Products incorporates Paragraphs 1–34 as if fully restated herein.

35. Winston Products denies the allegations in Paragraph 35.

36. Winston Products denies the allegations in Paragraph 36.

37. Winston Products denies the allegations in Paragraph 37.

38. Winston Products denies the allegations in Paragraph 38.

COUNT IV
(Infringement under 35 U.S.C. § 271(b) of U.S. Patent No. 6,789,295 by Winston Breeden, III)

39. Winston Products incorporates Paragraphs 1–38 as if fully restated herein.

40. Winston Products denies the allegations in Paragraph 40.

41. Winston Products denies the allegations in Paragraph 41.

42. Winston Products denies the allegations in Paragraph 42.

43. Winston Products denies the allegations in Paragraph 43.

AFFIRMATIVE DEFENSES

Winston Products, for its Affirmative Defenses to the First Amended Complaint, states as follows:

1. The First Amended Complaint, in whole or in part, fails to state a claim against Winston Products upon which relief can be granted.

2. Winston Products has not infringed, is not infringing, and has not induced others to infringe any of the claims of either the '295 patent or the D896 (collectively, "Asserted Patents") under any theory, including under any theories of direct or indirect infringement, literal infringement, or infringement under the doctrine of equivalents.

3. Winston Products has not committed any infringing act in violation of the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.,* including but not limited to willful infringement.

4. Plaintiffs' claims for indirect infringement are barred for lack of direct infringement.

5. Defendant Winston Breeden, III, is an individual employed by Winston Products LLC, is not a proper party, and should be dismissed from this action.

6. Some or all of the claims of the Asserted Patents are invalid for failing to meet the requirements under Title 35 of the United States Code, including, but not limited to 35 U.S.C. §§ 101–103 and/or 112, Paragraphs 1 and 2.

7. By reason of the proceedings in the U.S. Patent and Trademark Office during the prosecution of the applications that resulted in issuance of the Asserted Patents, as shown by the prosecution history thereof, Plaintiffs are estopped from maintaining that any claim of the Asserted Patents cover any of Winston Products' products.

8. Plaintiffs have not been damaged in any amount or manner by reason of any act alleged against Winston Products in the First Amended Complaint, or at all, and therefore, the relief prayed for in the First Amended Complaint cannot be granted.

9. Plaintiffs lack standing to assert the claims alleged in the Amended Complaint.

10. Plaintiffs are barred from recovering any damages, including but not limited to lost profits damages.

11. Plaintiffs' claims lack merit and are "exceptional" under 35 U.S.C. § 285.

12. Plaintiffs' claims and prayer for relief are limited by 35 U.S.C. § 287.

13. Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver, estoppel, laches, unclean hands, and/or acquiescence.

14. Plaintiffs are not entitled to any injunctive relief because any alleged injury to Plaintiffs is not immediate or irreparable, and Plaintiffs would have an adequate remedy at law.

15. Plaintiffs are not entitled to any relief, including, but not limited to, the relief Plaintiffs request in the First Amended Complaint.

16. Winston Products reserves the right, upon completion of its discovery or otherwise, to assert such additional defenses as may be appropriate.

COUNTERCLAIMS

In light of the actual controversy existing between Plaintiffs and Winston Products by virtue of the First Amended Complaint, and in accord with the Court's Order of August 25, 2016, Winston Products files these counterclaims against Plaintiffs.

1. Winston Products seeks a declaration that it (i) has not and does not infringe in any way the Asserted Patents, and (ii) the Asserted Patents are invalid under Title 35 of United States Code, including, without limitation, §§ 101, 102, 103, and/or 112.

PARTIES AND JURISDICTION

2. Amicus Trade AB is a corporation organized and existing under the laws of Sweden and has a principal place of business at Killeröds Byaväg 83, 26992 Bästad, Sweden.

3. Store Solutions, L.L.C., d/b/a Easyklip, is a Delaware limited liability company and has a place of business at 9330 Pulaski Highway, Baltimore, Maryland 21220.

4. Winston Products, LLC, is an Ohio limited liability company and has a principal place of business at 30339 Diamond Parkway, Cleveland, Ohio 44139.

5. Winston Breeden, III, is the Chief Executive Officer of Winston Products, LLC, and a United States citizen and resident of the State of Ohio.

6. Counterclaim Counts I–IV of Winston Products' Counterclaims arise under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and under the patent laws of the United States, 35 U.S.C. § 1, *et seq*. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a). Venue is established in this district under 28 U.S.C. §§ 1391 (b) and (c).

7. The Court also has personal jurisdiction over the parties and venue is proper in this district because Plaintiffs' claims are currently pending before this Court.

COUNTERCLAIM COUNT I
(Declaratory Judgment of Non-Infringement of the D896 Patent)

8. Winston Products incorporates Counterclaim Paragraphs 1–7 as if fully restated herein.

9. Amicus Trade AB alleges that it owns the D896 patent entitled "FASTENING CLIP."

10. Store Solutions, L.L.C., alleges that, by way of agreement, it has the exclusive right to enforce the D896 patent.

11. Plaintiffs sued Winston Products in the present action, alleging infringement of the D896 patent. Thus, an immediate, real, and justiciable controversy exists between Plaintiffs and Winston Products with respect to the alleged infringement of the D896 patent.

12. Winston Products does not infringe, has not infringed, and does not and has not induced infringement of any claim of the D896 patent under any theory, including literal infringement and infringement under the doctrine of equivalents.

13. Based on the foregoing, Winston Products is entitled to a judicial declaration that it does not infringe, directly or indirectly, any claim of the D896 patent.

COUNTERCLAIM COUNT II
(Declaratory Judgment of Non-Infringement of the '295 Patent)

14. Winston Products incorporates Counterclaim Paragraphs 1–13 as if fully restated herein.

15. Amicus Trade AB alleges that it owns the '295 patent entitled "CLAMP APPARATUS."

16. Store Solutions, L.L.C., alleges that, by way of agreement, it has the exclusive right to enforce the '295 patent.

17. Plaintiffs sued Winston Products in the present action, alleging infringement of the '295 patent. Thus, an immediate, real, and justiciable controversy exists between Plaintiffs and Winston Products with respect to the alleged infringement of the '295 patent.

18. Winston Products does not infringe, has not infringed, and does not and has not induced infringement of any claim of the ’295 patent under any theory, including literal infringement and infringement under the doctrine of equivalents.

19. Based on the foregoing, Winston Products is entitled to a judicial declaration that it does not infringe, directly or indirectly, any claim of the ’295 patent.

COUNTERCLAIM COUNT III
(Declaratory Judgment of Invalidity of the D896 Patent)

20. Winston Products incorporates Counterclaim Paragraphs 1–19 as if fully restated herein.

21. One or more claims of the D896 patent are invalid for failing to meet one or more of the requirements under Title 35 of the United States Code, including, but not limited to 35 U.S.C. §§ 101–103 and/or 112, paragraphs 1 and 2.

22. Based upon the foregoing, Winston Products is entitled to a judicial declaration that the D896 patent is invalid.

COUNTERCLAIM COUNT II
(Declaratory Judgment of Invalidity of the ’295 Patent)

23. Winston Products incorporates Counterclaim Paragraphs 1–22 as if fully restated herein.

24. One or more claims of the ’295 patent are invalid for failing to meet one or more of the requirements under Title 35 of the United States Code, including, but not limited to 35 U.S.C. §§ 101–103 and/or 112, paragraphs 1 and 2.

25. Based upon the foregoing, Winston Products is entitled to a judicial declaration that the ’295 patent is invalid.

PRAYER FOR RELIEF

Plaintiffs’ allegations lack sufficient factual or evidentiary support and present no valid basis upon which liability can be imposed against Winston Products. Further, Plaintiffs’ conduct has injured Winston Products. WHEREFORE, Winston Products prays for judgment against Plaintiffs as follows:

(a) Denying any and all relief requested by Plaintiffs and dismissing the First Amended Complaint, in its entirety, with prejudice;

(b) Declaring that the D896 patent is (a) not infringed and (b) invalid;

(c) Declaring that the ’295 patent is (a) not infringed and (b) invalid;

(d) Enjoining Plaintiffs from asserting that Winston Products, its officers, agents, representatives, shareholders, owners, investors, and/or customers infringe or induce infringement of any claims of the D896 patent or the ’295 patent;

(e) Declaring this case to be “exceptional” pursuant to 35 U.S.C. § 285 and awarding Winston Products its reasonable attorneys’ fees and costs; and

(f) Granting such other and further relief to Winston Products as this Court may deem just and equitable.

JURY DEMAND

Winston Products hereby demands a trial by jury on all issues so triable.

Dated: September 19, 2016

Respectfully submitted,

By: *s/James Mizgala* ____________________

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CERTIFICATE OF SERVICE

I hereby certify that on September 19, 2016, the foregoing ANSWER AND COUNTERCLAIMS was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

_*s/ James Mizgala*___________________
James Mizgala
An attorney for Winston Products, LLC, and Winston Breeden, III

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